

James E. Horton
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In Pro Per

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO

PEOPLE OF THE STATE) Dept. 10
) Case No.: 130003628
CALIFORNIA,) NOTICE OF MOTION TO
) DISMISS BECAUSE OF DENIAL
Plaintiff,) OF RIGHT TO SPEEDY TRIAL
)
vs.)
)
James E. Horton,)
)
Defendant)
)
)

TO THE ABOVE ENTITLED COURT, AND TO THE DISTRICT ATTORNEY OF YOLO COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that on _____, in Department ____ at _____, or as soon thereafter as the matter may be heard, the defendant, James E. Horton, will move the Court to dismiss the accusatory pleading filed herein on the grounds that the prosecution has unreasonably delayed, violating the defendant's right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 15 of the California Constitution. The delay has thus far been more than 2 years and 8 months from arraignment on 09122013. This motion will be based on the attached memorandum of points and authorities, declaration attached, and evidence taken at the hearing on this motion, argument at that hearing.

Date: _____
submitted,

Respectfully

Propria

James E. Horton, In Persona

MEMORANDUM

SUMMARY OF ARGUMENT

Defendant's fundamental right to a speedy trial has clearly been presumptively prejudiced prima facie by cumulative procedural, incompetent inefficiencies and numerous, time- delaying, prejudicial errors which have accumulated pendency of over two years and eight months since arraignment. Delay caused by procrastination of public officials has surpassed length of maximum sentence. Remedy at law is automatic dismissal of the case.

RULE OF LAW

Postaccusation delay is covered by article I, section 15 of the California Constitution: "[I]n criminal prosecutions, in any event whatever, the party accused shall have the right to a speedy and public trial..." The California provision for a speedy trial "reflects the letter and spirit of" the Sixth Amendment to the United States Constitution..." (People v Wilson (1963) 60 C2d 139, 144 n2, 32 CR 44.)

Pursuant to California Penal Code § 1382(a)-(B)(3), "The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases: ... Regardless of when the complaint is filed, when a defendant in a misdemeanor... case is not brought to trial within 30 days after he or she is arraigned, whichever occurs later..." In the present case, the Defendant was arraigned on 09/20/13.

FACTS AND ANALYSIS

THE INORDINATE DELAY IN THIS CASE HAS CAUSED PRESUMED PREJUDICE TO DEFENDANT PRIMA FACIE

Defendant has been arraigned on charge of a violation of PC § 148(a)(1). During pendency, trial has thus far been delayed by procrastination of public officials for an accrual of more than two years and eight months. Pursuant to statute, maximum jail term sentence is "imprisonment in a county jail not to exceed one year." By date of this filing, pendency until trial has been prolonged by procrastination of public officials for over one year and eight months surpassing length of the maximum jail sentence for the charge.

At a certain point, delay in prosecution becomes so prejudicial that the "defendant need not establish actual prejudice as a prerequisite to a hearing" which requires that the trial court must weigh this prejudice against the justification offered by the People. (Serna v Superior Court (1985) 40 C3d 239, 252, 219 CR 420; Stabio v Superior Court (1994) 21 CA4th 1488, 26 CR2d 615; Barker v Wingo (1972) 407 US 514, 92 S Ct 2182, 33 L Ed 2d 101; Harris v Municipal Court (1930) 209 C 55, 285 P 699; Gutterman v Municipal Court (1930) 209 C 65, 285 P 703.) This is sometimes called "presumed prejudice," as: "...A delay of more than one year between the arrest and prosecution in a misdemeanor charge with a one-year statute of limitations, is unreasonable and prejudice is presumed..." (Serna v Superior Court (1985) 40 C3d 239).

By relevant law, this means remedy required is prima-facie, automatic dismissal irregardless of weighing actual prejudice caused by bad-faith delay without "showing of good cause." Therefore, it would be in the interest of justice for the Court to dismiss the charge.

DEFENDANT IS PREJUDICED BY PROLONGED RESTRAINT OF LIBERTY TO AN AREA

In conclusion, proceeding on this action would not serve justice, but only prejudice the Defendant in that the delays are causing undue disruption to his life without justifiable cause. At time of arrest, defendant did not have outstanding warrants, nor a criminal record. Charge is minor based on minimal evidence. As a matter of fact, the first charge – stemming from an anonymous, citizen informant's dispatch call – was dropped having no merit before arraignment. Defendant is not even resident of area but was traveling through at time of incident at question. He intends to move on while his liberty is

restrained to the area, by inordinate delay, as an indigent without income. Furthermore, Defendant is forced by necessity to self-represent (as described in previous Faretta Motion) in such circumstances – his opportunities for employment are disrupted, his associations (such as Church affiliations) are curtailed. The drawnout procedural harassments, as above, are prejudicing the defendant with excessive anxiety inducement. As Defendant has asserted in previous motions, and hearings upon them: prosecution is based on a pretextual false-arrest as retaliatory, vindictive prosecution; defendant, also, has presented supported evidence (and as to motive) in these motions and hearings as well. Zealous prosecution would serve to only confirm Defendant's assertions concerning a pretextual arrest with motives toward malicious, retaliatory, prosecutorial misconduct. Also, it would belabor the "Court with unnecessary expense of time and resources – and over minor charge with little merit. (See Defendant's Motion to Set Aside the Information and Memorandum of Points and Authorities.)

According to *Serna*, "Right to speedy trial protects criminal defendant against oppressive pretrial incarceration, anxiety, concern and disruption to his everyday life" (*Serna v Superior Court* (1985) 40 C3d 239). Therefore, it would be in the interest of justice for the Court to dismiss the charge.

THE PROSECUTION FAILED TO PROCEED WITH SATISFACTORY DILIGENCE IN PROSECUTING THIS OFFENSE

The prosecution has a duty to employ all reasonable means to bring an accused promptly to trial. (*Rice v Superior Court* (1975) 49 CA3d 200; *Plezbert v Superior Court* (1971) 22 CA3d 169; *Jones v Superior* (1970) 3 C3d 734). And in *Sykes*, the California Supreme Court held that "a speedy trial requires prompt action upon the part of all who are officially concerned, at the least, to the extent that adjudication of a defendant's rights shall not be stifled by the procrastination of officials" (*Sykes v Superior Court* (1973) 9 C3d 83).

Whereas Defendant's trial, with excessively prejudicial, procedural inefficiency and procrastination by multiple public officials, is delayed since 09122013, hereunto; effectively, Defendant's right to a speedy trial (under both the Constitutions of the United States of America and of California respectively) has been presumptively prejudiced. Therefore, Defendant respectfully motions this Court to dismiss the accusatory pleading.

Date:_____

Persona

James E. Horton, In Propria

DECLARATION OF JAMES E. HORTON
IN SUPPORT OF MOTION TO DISMISS

1. I, James E. Horton, am the Defendant in the above entitled case.
2. I declare under penalty of perjury the following:

Defendant's fundamental right to a speedy trial has clearly been presumptively prejudiced by procedural incompetence and inefficiency rising to Prosecutorial Harassment in that: THE INORDINATE DELAY IN THIS CASE HAS CAUSED PRESUMED PREJUDICE TO DEFENDANT PRIMA FACIE and THE DEFENDANT IS PREJUDICED BY PROLONGED RESTRAINT OF LIBERTY TO AN AREA.

3. At all times from the alleged commission of this offense, I was indigent in Woodland, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Date:_____

James E. Horton, In Propria

Persona

DECLARATION OF PERSONAL SERVICE

I, the undersigned, declare that I am a citizen of the United States, over the age of eighteen years, and Defendant, In Propria Persona in the within action. My mailing address is 204 4th St., Suite A, Woodland, CA 95695.

On _____, I deposited in the United States mail at the Post Office in Woodland, CA, a copy of the attached MOTION TO DISMISS BECAUSE OF DENIAL OF RIGHT TO SPEEDY TRIAL in a sealed envelope, with postage fully prepaid, by certified mail addressed to the person named below:

DISTRICT ATTORNEY'S OFFICE

301 Second Street

Woodland, CA 95695

Executed under penalty of perjury on _____, in Woodland, California.

James E. Horton, In Propria

Persona